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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,843	10/19/2001	Mark DeSilets	US 018172	2507

7590

09/21/2004

Corporate Counsel
Philips Electronics North America Corporation
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EXAMINER

MANTIS MERCADER, ELENI M

ART UNIT	PAPER NUMBER
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3737

DATE MAILED: 09/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/027,843

Applicant(s)

DESILETS ET AL.

Examiner

Eleni Mantis Mercader

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19, 21, 22 and 24-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19, 21, 22 and 24-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

FINAL ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-29 have been considered but are moot in view of the new ground(s) of rejection. The introduction of "nuclear camera" and the fixing relationship amendments regarding the bores constitute new grounds for rejection.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the term "nuclear camera" as now claimed in claim 1 does not have antecedent basis with respect to the specification. The specification must be amended to provide such antecedent basis.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-2 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 8-9 of U.S. Patent No. 6,754,520. Although the conflicting claims are not identical, they are not patentably distinct from each other because the

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current claims 1-2 are broader in scope and therefore anticipated by the issued claims. The current claims are broader in that they do not claim the pallet and the driving mechanism.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Townsend et al.'476 as evidenced by Zhu'405.

Townsend et al.'476 teach a medical imaging apparatus, comprising:

a first tomographic medical imaging device having an opening for receipt of a subject patient, the first imaging device comprises one of a group consisting of CT, MRI, X-Ray, and Ultrasound devices wherein the imaging information represents anatomical structure(see col. 12, line 49; referring to X-ray CT detector 12 in the first imaging device having an opening 16a; see element 16a in Figure 2b);

a second tomographic medical imaging device having an opening for receipt of the subject patient and the second imaging device comprises one of a group consisting of SPECT and PET devices wherein the imaging information represents physiological functions of the patient (see col. 12, line 50; referring to PET detector 14 in the second imaging device see element 16b in Figure 2b);

an imaging device support structure securing the openings of the first and second imaging devices in a fixed spatial relationship and in alignment with an imaging axis during the formation of one or more tomographic images, by at least one of the imaging devices, of the subject patient (see col. 12, lines 49-53);

a patient support structure extending through the openings of the first and second imaging devices during the formation of one or more images by at least one of the imaging devices; and the imaging device support structure forming a patient access area between the first and second imaging devices through which a caregiver can directly observe the subject patient between the openings of the first and second imaging devices (see the space provided in-between the CT and PET imagers).

Townsend et al.'476 teach the axes of openings of the first and second imaging devices being substantially aligned (see Figure 2b). Furthermore, the spacing between the two bores is free of obstructions as indicated by Figure 2b and the two bores are physically fixed and connected to each other as described in col. 12, lines 46-48, while the patient support bed translates between the two aligned bores (see col. 12, lines 37-48).

The teaching of nuclear cameras inherently being used in PET and SPECT imagers is evidenced by Zhu'405 (see col. 4, lines 58-65).

7. Claim 2 is rejected under 35 U.S.C. 102(e) as being anticipated by Townsend et al.'476.

Townsend et al.'476 teach a medical imaging apparatus, comprising:

a first tomographic medical imaging device having an opening for receipt of a subject patient, the first imaging device comprises one of a group consisting of CT, MRI, X-Ray, and Ultrasound devices wherein the imaging information represents anatomical structure(see col. 12,

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line 49; referring to X-ray CT detector 12 in the first imaging device having an opening 16a; see element 16a in Figure 2b);

a second tomographic medical imaging device having an opening for receipt of the subject patient and the second imaging device comprises one of a group consisting of SPECT and PET devices wherein the imaging information represents physiological functions of the patient (see col. 12, line 50; referring to PET detector 14 in the second imaging device see element 16b in Figure 2b);

an imaging device support structure securing the openings of the first and second imaging devices in a fixed spatial relationship and in alignment with an imaging axis during the formation of one or more tomographic images, by at least one of the imaging devices, of the subject patient (see col. 12, lines 49-53);

a patient support structure extending through the openings of the first and second imaging devices during the formation of one or more images by at least one of the imaging devices; and the imaging device support structure forming a patient access area between the first and second imaging devices through which a caregiver can directly observe the subject patient between the openings of the first and second imaging devices (see the space provided in-between the CT and PET imagers).

Townsend et al.'476 teach the axes of openings of the first and second imaging devices being substantially aligned (see Figure 2b). Furthermore, the spacing between the two bores is free of obstructions as indicated by Figure 2b and the two bores are physically fixed and connected to each other as described in col. 12, lines 46-48, while the patient support bed translates between the two aligned bores (see col. 12, lines 37-48).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3-19, 21 and 22, 24-29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Townsend et al.'476 in view of Robinson'453.

Townsend et al.'476 teach all the features of the instant invention except for a fluid control surface positioned beneath the patient support structure and between the first and second imaging devices for directing liquids falling onto the surface from the vicinity of the patient support structure away from the subject patient.

In the same field of endeavor, Robinson'453 teaches a fluid control surface or a peripheral skirt positioned beneath the patient support structure capable of being placed at any surgical site of interest to drain the surgical area such as between the first and second imaging devices for directing liquids falling onto the surface from the vicinity of the patient support structure away from the subject patient (see Figure 1 and elements 56 and 52 draining in a curved type manner or arcuate structure into the draining apparatus 20 downward and away from the patient; also see col. 10, lines 49-67 and col. 11, lines 1-19).

It would have been obvious to one skilled in the art at the time that the invention was made to have modified Townsend et al.'476 and incorporated the feature of Robinson'453 through the support table in order to allow for drainage in surgical procedures guided by imaging, while the patient is transferred in the imaging areas and in-between those areas.

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Regarding claims 4-6, while Townsend et al.'476 do not specifically address the application of the apparatus for con-current surgical procedures, Townsend et al.'476 describes the improvements in imaging quality to provide precise localization of lesions for biopsy procedures (see col. 20, lines 3-11).

It would have been obvious to one skilled in the art at the time that the invention was made to have utilized the system to guide surgical procedures, as it is well known to skilled artisans to use imaging allowing for more precise procedures in surgery.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eleni Mantis Mercader whose telephone number is 703 308-0899. The examiner can normally be reached on Mon. - Fri., 8:00 a.m.-6:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Eleni Mantis Mercader
Primary Examiner
Art Unit 3737

EMM